S.B. Civil Writ Petition No.2603/07
Jagdish Chandra Gupta Vs. Presiding Officer & Anr.

28.5.2007

Hon'ble Mr. Justice Mohammad Rafiq

Shri A.K. Bajpai for petitioner.
Ms. Sweety Sharma for respondent.

Heard learned counsel for the parties.

The learned counsel for the petitioner has challenged the order dated 19.3.2007 whereby his application under Section 15 for taking the affidavits on record has been rejected by the Rent Control Tribunal, Alwar. The respondents filed an application under Section 9 of the Rajasthan Rent Control Act, 2001 on 29.6.2005 for eviction of the petitioner on the ground of bonafide necessity. The

petitioner filed reply to that application on 5.9.2005 to which rejoinder was filed by the petitioner on 5.10.2005. Issues were framed on 2.5.2006 and it is stated that evidence of the contesting respondent was completed on 21.9.2006 and soon thereafter the application was moved by the petitioner for taking the affidavits on record on 4.10.2006. The learned Presiding Officer in the meantime framed additional issues on 20.2.2007, yet the application aforesaid was rejected by impugned order dated 19.3.07.

Learned counsel for the petitioner argued that although Section 15(3) of the Rajasthan Rent Control Act, 2001 provides that the reply along with affidavits and documents should be filed

within 45 days from the date of service of notice, however on account of the fact that the provision aforesaid could not be properly apprehended, only one affidavit of the petitioner was filed and other supporting affidavits were not filed. These affidavits are necessary to be brought on record for proving not only the originally proved issues but also the additional issues which, it is admitted, was framed at a much later point time on 20.2.07. It was argued that taking the affidavits on record would not in any manner prejudice the case of the respondent who may be compensated by cost and giving an opportunity to file any affidavit in rebuttal.

Learned counsel for the respondent opposed the writ petition and

submitted that taking the affidavits on record would delay the proceedings and the order of the learned Rent Control Tribunal is absolutely correct.

Having heard the learned counsel for the parties, I find that the fact that additional issue was framed on 20.2.07 and the application for placing on record the affidavits was filed within a fortnight from the date of closer of the evidence of the respondent. These two important factors should weigh in favour of the petitioner in taking those affidavits on record, which he could not inadvertently filed along with the reply to the petition.

In the facts of the case, it would appropriate that the evidence which may enable the Tribunal to decide the

matter effective is taken on record though with a liberty to the respondent to produce any other evidence which he may like to place in rebuttal thereto.

Accordingly, the impugned order dated 19.3.2007 is set aside and the affidavits filed along with the application are taken on record subject to the petitioner making payment of a sum of Rs.1,000/- to respondent no.2 within two weeks. Respondent no.2, if he so desires, may apply for cross examination of those witnesses on one single day and may also be at liberty to file any other affidavit in rebuttal on one single day which may be fixed thereafter.

With these observations, the writ petition is allowed.

(Mohammad Rafiq),J.